IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 147 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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BHAGVATI PETROLEUM,
THROUGH THEIR PROPRIETOR - Applicant
Versus
STATE OF GUJARAT AND ANOTHER – Opponents

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Appearance :

MR RC JANI for Applicant.
MS NANDINI JOSHI, ADDITIONAL PUBLIC PROSECUTOR for Opponents.

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 25/04/2006

ORAL JUDGMENT

1. Heard Mr. R. C. Jani, learned Advocate for the applicant-firm and Ms. Nandini Joshi, learned Additional Public Prosecutor, for the opponents.

2. The applicant-firm has filed the present application under Section 397 of the Code of Criminal Procedure, 1973 read with Section 6 (c) of the Essential Commodities Act, praying therein to set aside and quash the order dated 21-10-2005 passed by the learned Presiding Officer and Additional Sessions Judge, Fast Track Court No. 4, Gandhinagar at Kalol in Criminal Appeal No. 26 of 2004.

3. Mr. Jani, learned Advocate for the applicant-firm, submitted that the order passed by the learned Judge is illegal, erroneous and improper and requires to be quashed and set aside. It is further submitted that the learned Judge has not appreciated the facts of the case in its true perspective and, therefore, the order requires to be quashed. The learned Advocate contended that the learned Judge ought to have decided the matter on merits of the case instead of deciding the same on technical grounds. Thus, it is argued by the learned Advocate that the impugned order be quashed and set aside and the matter be remitted.

4. As against the aforesaid submissions, Ms. Joshi, learned Additional Public Prosecutor representing the

opponents, submitted that the learned Judge has taken into consideration the facts and material produced on the record of the case, and after going through the entire record of the case, dismissed the appeal. It is also submitted that the learned Judge has elaborately discussed the merits of the case and considered the entire gamut of evidence, which was adduced by the parties, and held that, as the appellant had not made out the case in the appeal, the appeal cannot be allowed. In view of the detailed reasons assigned by the learned Judge, it is urged by the learned Additional Public Prosecutor that the Criminal Revision Application preferred by the applicant is devoid of merits and the same is liable to be rejected.

5. On perusal of the order passed by the learned Judge, it becomes clear that the material, which was placed before the learned Judge, and the evidence, which was adduced, were not taken into consideration and the order was not passed on merits of the case. The appeal was dismissed on the short ground of maintainability. However, the learned Judge has discussed in the order that the merits of the case was also considered but there is no detailed discussion with regard to the same.

6. In view of the aforesaid facts and circumstances, it would be just and proper to remit the matter to the learned Judge for passing necessary order on merits after hearing the respective parties by quashing and setting aside the impugned order.

7. For the foregoing discussion, the Criminal Revision Application is allowed. The order dated 21-10-2005 passed by the learned Presiding Officer and Additional Sessions Judge, Fast Track Court No. 4, Gandhinagar at Kalol in Criminal Appeal No. 26 of 2004, confirming the order dated 02-01-1998 passed by the District Supply Officer, Mehsana, in Case No. SP/TPS/ACHIV/6A/CASE/107/97, is hereby quashed and set aside. The learned Judge is directed to hear the matter on merits and pass the order after hearing the respective parties. Rule is made absolute.

[H. B. ANTANI, J.]

/shamnath